



Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

Approved for use through xx/xx/200x. OMB 0651-00xx

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

## PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

LOREAL 3.0-058

	Application Number 10/645,771-Conf. #8763	Filed August 21, 2003
First Named Inventor Philippe Briand		
Art Unit 3754	Examiner J. A. Kaufman	

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

- applicant /inventor.  
 assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b)  
is enclosed. (Form PTO/SB/96)

- attorney or agent of record.

Registration number 54,334

  
Signature

George K. Ng

Typed or printed name

- attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34. \_\_\_\_\_

(908) 518-6388

Telephone number

November 10, 2005

Date

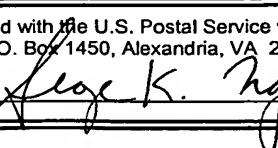
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.  
Submit multiple forms if more than one signature is required, see below\*.

\*Total of 1 forms are submitted.

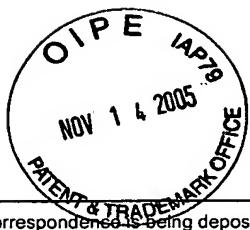
603871\_1.DOC

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.

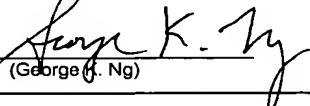
Dated: November 10, 2005

Signature: 

(George K. Ng)



I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail, in an envelope addressed to: MS AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.

Dated: November 10, 2005 Signature:   
(George K. Ng)

**EXPEDITED PROCEDURE**  
Group Art Unit: 3754  
Docket No.: LOREAL 3.0-058

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of: :  
Philippe Briand :  
Application No.: 10/645,771 : Group Art Unit: 3754  
Filed: August 21, 2003 : Examiner: J. A. Kaufman  
For: DISPENSER DEVICE :  
:

**REASONS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW**

MS AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

In response to the Office Action dated June 13, 2005 finally rejecting claims 1-27, the accompanying Pre-Appeal Brief Request For Review, Notice of Appeal, Two-Month Petition For Extension Of Time, and the following remarks are respectfully submitted.

For the following reasons, Applicant's Pre-Appeal Brief Request For Review is proper and necessary. Specifically, aside from the 35 U.S.C. § 112, second paragraph, rejection (that may be easily attended to with a simple amendment to replace the phrase "dispenser opening" with the phrase "dispenser orifice" in claim 19), the 35 U.S.C. § 112, first paragraph, 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a) rejections are clearly improper rejections based upon errors in fact. Moreover, with regards to the § 102(b) and §103(a) rejections, the Examiner failed to establish a prima facie case of anticipation and obviousness.

Claims 20 to 27 have been rejected under 35 U.S.C. § 112, first paragraph, for lack of written description. The Examiner has concluded there is no support for the "fixed position" of the dispenser orifice limitation and the "surface" being in communication with an environment upon which the material is dispersed limitation in claims 20-27. This rejection is erroneous and traversed because there is written description support in the specification for the features in these claims.

Regarding the feature of a fixed position for the dispenser orifice independent of the second part, as iterated in claims 20, 22, 24 and 26, support for this feature is shown in paragraph [0023] of the specification. As disclosed in paragraph [0023], "[t]he dispenser orifice may be permanently formed between the surfaces belonging respectively to the first and second parts, regardless of whether the dispenser device is in the dispensing position or the closed position." Additionally, as explained in paragraph [0021], the second part may be turned relative to the first part to switch from the closed position to the dispensing position. Thus, as provided in the specification, the dispenser orifice may be permanently formed, such that its position (i.e., between the surfaces of the first and second parts) is fixed regardless of the orientation or turning of the second part. Since the specification provides support for this feature, withdrawal of the § 112, first paragraph, rejection with respect to claims 20, 22, 24 and 26 is respectfully requested.

Regarding the feature of a surface being in communication with the environment upon which the substance is dispersed upon dispensing from the dispenser orifice, as iterated in claims 21, 23, 25 and 27, support for this feature is shown in paragraphs [0011], [0012] and [0024] collectively. As explained in paragraph [0024], a "substance contained in the

receptacle can leave the device through a dispenser orifice opening out directly to the outside." Additionally, according to paragraphs [0011] and [0012], the device of the present invention may comprise a top wall and an end wall that "present outside surfaces," whose edges define the two surfaces between which the dispenser orifice is formed. Thus, the device of the present invention may include one or more surfaces (i.e., the outside surfaces of the end wall and the top wall), that are in communication with the outside, which is an environment upon which the substance is dispersed upon dispensing from the dispenser orifice. Since the specification also provides support for this feature, withdrawal of the § 112, first paragraph, rejection with respect to claims 21, 23, 25 and 27 is respectfully requested.

Claims 1, 2, 4-11, 13, 14 and 16-19 have been rejected under 35 U.S.C. § 102(b) over U.S. Patent 5,358,146 (Stull); and claims 3, 12 and 15 have been rejected under 35 U.S.C. § 103(a) over Stull. These rejections are erroneous and thus, traversed.

According to independent claims 1 and 17-19, the present invention is directed to a receptacle or device containing a cosmetic or care substance. For the sake of brevity, Applicant directs the Patent Office Panel to pages 8-11 Amendment dated April 28, 2005 for a more complete description of the present invention.

As discussed on page 10 in the April 28, 2005 Amendment, one important common feature is that the dispenser orifice, which is formed between surfaces of the first part and the second part, opens out directly into the environment. Thus, the dispenser orifice must be formed between the first and second parts and at the same time, open out directly to the environment. This is not shown or supported by Stull. Moreover, such a distinguishing feature, provides a major advantage over the Stull reference. Specifically, with

Applicant's invention, the size and shape of the dispenser orifice may be adjusted to prevent sand and unwanted small particles from entering the receptacle or device without utilization of extra parts.

In the Office Action, the Examiner maintains that Stull discloses a receptacle or device with all of the limitations of the present invention. As apparent from the Office Action, the Examiner has taken the position that Stull's recesses 30 and 36 are the same as the dispenser orifice of the present invention, and that these recesses 30 and 36 open out directly to the environment when Stull's discharge orifice 38 is aligned with the recesses 30 and 36. Applicant respectfully disagrees.

Assuming arguendo that Stull's recesses 30 and 36 are the same as the present invention's discharge orifice, which is formed between the surfaces of two parts, Stull still does not disclose or teach the feature of a dispenser orifice that opens directly out to the environment. In Stull, even when aligned, a substance that passes through the recesses 30 and 36 must still pass through its discharge orifice 38. Thus, the substance does not flow directly out to the environment or outside. The recesses 30 and 36 do not open out to the environment. Arguably, the recesses 30 and 36 do not "open out" to anything at all and are instead, merely in communication with the discharge orifice 38, and even then, as shown in Figure 6, only recess 30 really communicates with the discharge orifice 38. Additionally, the dispenser orifice of the present invention opens out directly to the environment regardless of whether the receptacle or device is in a closed or dispensing position.

Stull's discharge orifice 38 is formed in a cap 24, which is an extra part that the present invention does not require for dispensing substances contained in the receptacle. Indeed, Stull is silent as to any feature that prevents the

entry of unwanted small particles.

Accordingly, with Stull's omission of a dispensing orifice that opens out directly to the environment, the Examiner has not shown that Stull discloses every single feature of the present claims.

Still further, Stull does not suggest or teach one of ordinary skill in the art to adjust Stull's dispensing device so that its recesses 30 and 36 open out directly to the environment, especially since a cap 24 (which the discharge orifice 38 is a part of) that fits over the recesses is integral to the design and purpose of Stull's dispensing device.

Therefore, withdrawal of the § 102(b) and § 103(a) rejections is deemed proper and respectfully requested.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections of the claims and to pass this application to issue.

If there are any additional charges in connection with the Pre-Appeal Brief Request and the foregoing remarks, the Office is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: November 10, 2005

Respectfully submitted,

By George K. Ng  
George K. Ng  
Registration No.: 54/334  
LERNER, DAVID, LITTENBERG,  
KRUMHOLZ & MENTLIK, LLP  
600 South Avenue West  
Westfield, New Jersey 07090  
(908) 654-5000  
Attorney for Applicant